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10/028,730	10/19/2001	Michael Collins	00-682	4112

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EXAMINER

KOCZO JR, MICHAEL

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/028,730
Filing Date: October 19, 2001
Appellant(s): COLLINS ET AL.

**MAILED
JAN 02 2008
GROUP 3700**

George A. Coury
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 17, 2007 appealing from the Office action mailed August 21, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 37 to 40 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1, 2, 3, 17 and 24 stand rejected under 35 U.S.C. 102(b) as being anticipated by Gunn et al (US 5,820,352).

Claims 6, 7, 18, 19, 21 to 23, 26 to 28 and 30 to 32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gunn et al (US 5,820,352) in view of Kauffman et al (US 5,209,076).

Claims 4, 5, 20, and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gunn et al (US 5,820,352) in view of Allison et al (US 5,772,403).

(10) Response to Argument

Ground 1

Appellant argues that “the present disclosure, showing a control box connected with the processor and various inputs and outputs, would certainly enable a person skilled in the art to make and use the invention including the system control box.” (p. 13, ll. 3 to 6 from the bottom of brief). This is merely an unsubstantiated allegation. All control boxes have inputs and outputs. However, without knowing what is the function of the control box, that is, what is the relationship between the input signals and the output signals, it is not seen how one of ordinary skill in the art could make and use the invention. For example, what change in input signals or operating conditions would cause a change in operating speed or cause the power to be turned off? What function does the control box 40 perform which is not already performed by the control module 12?

Ground 2

On page 14, paragraph 3 of the brief, appellant describes the operation of the control system and then alleges that “Gunn et al. do not at all teach this subject matter, and therefore that Gunn et al. do not anticipate independent claims 1, 17 or 24.” However, appellant fails to provide any facts to support the allegation that Gunn et al do not teach the claimed subject matter. As stated in the final rejection of August 21, 2006, Gunn et al disclose a control action to shut down the compressor (col. 12, bottom para.) and control action for prognostic protection, wherein a signal indicating that maintenance is needed is issued while the compressor is continued to be operated (col. 6, para. 4).

Regarding claim 24 which recites that the control system is incorporated into a control module, appellant argues that this “is a distinction from the art of record which is not disclosed or suggested by same” (page 14, bottom para. of brief). Attention is directed to col. 4, bottom para. of Gunn et al which states that “The compressor control system includes an electronic control module or “ECM” referred to at 42 in FIG. 2”.

Ground 3

Appellant does not argue the rejection of these claims separately, but apparently bases the allowability of these claims on the alleged allowability of the claims from which they depend.

Ground 4

Appellant argues that the Examiner indicated in the final rejection that Allison et al teach a system for determining when the next *scheduled maintenance* should occur, that the inputs in question include compressor discharge pressure, compressor discharge temperature, compressor suction pressure etc., and that one would not rely upon such input to determine the next

“scheduled maintenance” for a device. The examiner used the expression “scheduled maintenance” in the same context as used by Allison et al. One definition of “scheduled” is “events to occur at or during a particular time or period.” It is clear from the disclosure of Allison et al (see col. 9, bottom para.) that the time of maintenance is actually unscheduled since it is a function of variable input signals from sensors, as in appellants claim 4, and such time is therefore not an event to occur at or during a particular time or period.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Michael Kocz, Jr.
Primary Examiner
Art Unit 3746

Conferees:

/Marc Jimenez/

/Devon Kramer/